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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Jane Doe #1, *et al.*,

Plaintiffs,

v.

Alejandro Mayorkas, Secretary of
Homeland Security, *et al.*,

Defendants.

Case No. 4:15-cv-00250-DCB

STIPULATION

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* *Admitted pursuant to Ariz. Sup. Ct. R. 39*

1 The parties hereby stipulate to the following facts.

2 1. In June 2015, Jane Doe #1, Jane Doe #2, and Norlan Flores, who had been
3 in CBP custody at a Tucson Sector Border Patrol station, filed this complaint, alleging
4 that Tucson Sector deprived them of warmth, hygiene, sanitary conditions, medical
5 screening, and adequate food and water, without due process under the Fifth Amendment,
6 and that CBP unlawfully withheld agency action by not complying with its own
7 guidance. (Complaint for Declaratory and Injunctive Relief, ECF No.1.) They sought
8 declaratory and injunctive relief. (*Id.*)

9 2. Over the next five years, the parties litigated this case, which included
10 extensive discovery and multiple motions filed with the Court.

11 3. In January 2016, the Court certified a class, defined, after a subsequent
12 amendment, as “[a]ll individuals who are now or in the future will be detained at a [U.S.
13 Customs and Border Protection (“CBP”)] facility within the Border Patrol’s Tucson
14 Sector.” (Order, ECF No. 117; Order Amending Class Definition, ECF No. 173.)

15 4. From January 13 to 22, 2020, the Court held a seven-day bench trial.
16 (Minute Entries, ECF Nos. 451-53, 456-60, 481; Transcripts, ECF Nos. 467-79.)
17 Plaintiffs presented five witnesses, including three witnesses and two class members, and
18 video evidence. The government presented ten witnesses, including one expert and nine
19 CBP agents and employees.
20

21 5. On February 19, 2020, the Court issued its judgment and its findings of fact
22 and conclusions of law, in favor of Plaintiffs. *Unknown Parties v. Wolf*, — F. Supp. 3d
23 —, 2020 WL 813774 (D. Ariz. Feb. 19, 2020); *see also* Judgment in a Civil Case, ECF
24 No. 483.

25 6. On April 17, 2020, after briefing from the parties (*see* ECF Nos. 484-85,
26 489, and 493), the Court issued a permanent injunction order, in which it ordered CBP to
27 take certain actions with regard to conditions of confinement at Tucson Sector stations.
28 (Order for Permanent Injunction, ECF No. 494.)

1 7. Throughout this litigation, Plaintiffs were represented by attorneys
2 affiliated with five organizations: (1) Morrison and Foerster, through attorneys and
3 paralegals in Palo Alto, San Diego, and San Francisco, California, Tokyo, Japan, and
4 Washington, D.C.; (2) National Immigration Law Center (“NILC”), in Los Angeles,
5 California; (3) American Immigration Council (“AIC”), in Washington, D.C;
6 (4) American Civil Liberties Union of Arizona (“ACLUAZ”), in Phoenix, Arizona; and
7 (5) Lawyers Committee for Civil Rights of the San Francisco Bay Area (“LCCRSF”), in
8 San Francisco, California.

9 8. On May 11, 2021, Plaintiffs filed an Application and Bill of Costs pursuant
10 to Local Rule 54.1 and the Equal Access to Justice Act, 28 U.S.C. § 2412 (“EAJA”).
11 (ECF No. 521.) Defendants opposed the application as untimely. (ECF No. 522.) On
12 May 28, 2021, the clerk denied the application as untimely. (ECF No. 523.) On June 4,
13 2021, Plaintiffs moved the district court to review the Clerk’s decision (ECF No. 524; *see*
14 *also* ECF No.526), and, on June 21, 2021, Defendants filed an opposition (ECF No. 525).
15 That motion remains pending.

16 9. Plaintiffs have not moved for attorneys’ fees and non-taxable expenses
17 pursuant to EAJA but have expressed their intent to do so.

18 10. On June 15, 2021, Plaintiffs sent Defendants a request for \$4,865,306 in
19 fees and expenses, under EAJA (\$4,188,338 for fees, \$676,968 for expenses), from the
20 five organizations that represent the class. Plaintiffs provided the amounts of fees and
21 expenses that each organization requested. Plaintiffs attached Adobe pdf files from the
22 five organizations. Each organization provided the names of the attorneys and paralegals
23 who worked on the case, each timekeeper’s hourly rate, the dates on which they
24 performed the work, the number of hours they spent, and brief descriptions of the work.

25 11. On August 19, 2021, counsel for the parties met and conferred. Defendants
26 requested additional information to justify an award and that each organization
27 representing Plaintiffs provide their billing information in Excel spreadsheet format.
28

12. On September 3, 2021, the parties jointly requested that the Court refer this case to a settlement judge. (ECF No. 532.)

13. On September 7, 2021, Plaintiffs' counsel sent Defendants' counsel a revised proposed request for fees and expenses. On September 9, they provided a written narrative providing the basis for Plaintiffs' request for fees, by litigation milestone, and explanations regarding reductions in the amount of the request. Plaintiffs also provided, from four of the five organizations, their hourly attorney fee information in Excel spreadsheet format.

14. A summary table of the requested fees and expenses provided to Defendants' counsel is shown below:

Firm/Organization	Fees	Expenses	Total
Morrison & Foerster	\$ 2,460,244.35	\$ 587,252.82	\$ 3,047,497.17
American Civil Liberties Union of Arizona	\$ 388,683.70	\$ 11,124.96	\$ 399,808.66
American Immigration Council	\$ 396,332.40	\$ 12,224.11	\$ 408,556.51
Lawyers' Committee for Civil Rights of the San Francisco Bay Area	\$ 359,365.00	\$ 14,637.59	\$ 374,002.59
National Immigration Law Center	\$ 529,788.50	\$ 36,550.05	\$ 566,338.55
Subtotals	\$ 4,134,413.95	\$ 661,789.53	\$ 4,796,203.48

15. On September 13, 2021, the Court referred the matter to Honorable Eric J. Markovich, Magistrate Judge for the District of Arizona, for a settlement conference to attempt resolution of attorney fees and costs. (ECF No. 533.)

1 16. On October 18, 2021, Plaintiffs' counsel provided narrative descriptions of
2 expenses to accompany the narrative descriptions of fees, previously provided on
3 September 9, along with additional details regarding non-taxable expenses.

4 17. On October 25, 2021, Defendants' counsel sent Plaintiffs a counter-offer,
5 proposing to settle for a payment of \$3,109,277.60. Defendants proposed specific
6 reductions based on their assertions of: Plaintiffs' litigation risk; the enhanced hourly
7 rates that the attorneys from NILC, AIC, ACLU-AZ, and LCCRSF requested; excessive
8 staffing of tasks; excessive time spent on tasks; time spent on tasks on which Plaintiffs
9 did not prevail; block billing; and excessive costs.

10 18. On October 26, 2021, the Parties jointly participated in a Settlement
11 Conference before Judge Markovich, which lasted the entire day. Under his supervision,
12 the Parties reached an agreement under which CBP agreed to pay Plaintiffs' counsel
13 **\$3,832,052.00** in full and complete satisfaction of any claims by Plaintiffs or Plaintiffs'
14 counsel for costs, attorneys' fees, and litigation expenses, including any interest, that
15 were incurred in connection with the litigation.

16 19. Following the Settlement Conference, the Parties memorialized this
17 agreement in the accompanying Settlement Agreement and Release as to Attorneys' Fees,
18 Expenses, and Taxable Costs.
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1 DATED: February 16, 2022

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